

FILED
San Francisco County Superior Court

SEP 30 1992

MICHAEL K. TAMONY, Clerk
BY *[Signature]*
Deputy Clerk

16200

STATUS CONFERENCE DATE: APR 23 1993 10:00 A.M.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

SILVER WINGS, L.P., a Delaware)
Limited Partnership; DONNIE)
ANTRIM and CHARLEIN ANTRIM,)
husband and wife; J.H.)
BLENKLE; NORMAN BURCHFIELD and)
EMILY B. KILE, dba BURCHFIELD)
KILE ENTERPRISES; GAYLE C.)
CAMP; E. THERESA CLEAR; PEGGY)
D. CORNISH; PATRICIA H. CRONE;)
ANN G. DEVENY; WILLIAM C.)
DIERUF, JR.; VICKIE J. FEUTZ;)
ROBERT E. FORD; STEVE FURR;)
DONALD E. GARDNER; MARION H.)
GREENWOOD; GERALDINE F.)
HASPEL; DELLUS L. HELTON;)
NOREEN L. HOGG; TERRY A.)
JANSEN; JOSEPHINE B. KNIGHT;)
EDITH CAROLYN KORSMEYER,)
Executrix for the ESTATE OF)
RICHARD B. KORSMEYER; PAUL I.)
KOSKO; MILDRED KURTZ; CHARLES)
SCOT McARTHUR, O.D.; LINDA)
McDADE; JOHN R. EDWARDS,)
trustee for the McKIBBEN)
FAMILY IRREVOCABLE TRUST;)
BONNIE McNATT; FREDERIC W.)
MEYERS; HUGH M. NELSON; KEVIN)
L. OWENS; T.E. PARKER; MICHAEL)
VIGNOLA; S. DIANNE WORRALL;)
VICTOR H. KLASSEN, trustee for)
the Revocable Living Trust of)
VICTOR H. KLASSEN; and ROSA A.)
BAYER, individuals,)

Plaintiffs,)

No: 946286

COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENCE, FRAUD,
NEGLIGENT MISREPRESENTATION AND
BREACH OF FIDUCIARY DUTY

1 v.)
2 ROMULUS ENGINEERING, INC., a)
3 Delaware corporation; THE 22ND)
4 CENTURY CORPORATION, a)
5 corporation; ROMULUS)
6 CORPORATION, a corporation;)
7 SMG CORPORATION, a)
8 corporation; GENERAL CELLULAR)
9 INTERNATIONAL, INC., dba)
10 CELLULAR INTERNATIONAL, INC.,)
11 a corporation; INDEPENDENT)
12 CELLULAR TELEPHONE, INC., a)
13 corporation; QUENTIN L. BREEN;)
14 ANTHONY T. EASTON, DANIEL J.)
15 PARKS, individuals, and DOES 1)
16 through 100, inclusive,)
17 Defendants.)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

PLAINTIFFS hereby allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff SILVER WINGS, L.P. ("SILVER WINGS") is a Limited Partnership, organized and existing under the laws of the State of Delaware with its principal place of business in the State of Florida.
2. Plaintiffs DONNIE ANTRIM; CHARLEIN ANTRIM; J.H. BLENKLE; NORMAN BURCHFIELD and EMILY B. KILE, dba BURCHFIELD KILE ENTERPRISES; GAYLE C. CAMP; E. THERESA CLEAR; PEGGY D. CORNISH; PATRICIA H. CRONE; ANN G. DEVENY; WILLIAM C. DIERUF, JR.; VICKIE J. FEUTZ; ROBERT E. FORD; STEVE FURR; DONALD E. GARDNER; MARION H. GREENWOOD; GERALDINE F. HASPEL; DELLUS L. HELTON; NOREEN L. HOGG; TERRY A. JANSEN; JOSEPHINE B. KNIGHT; EDITH CAROLYN KORSMEYER, Executrix for the ESTATE OF RICHARD B. KORSMEYER; PAUL I. KOSKO; MILDRED KURTZ; CHARLES SCOT McARTHUR, O.D.; LINDA McDADE; JOHN R. EDWARDS, trustee for the McKIBBEN FAMILY IRREVOCABLE TRUST; BONNIE McNATT; FREDERIC W. MEYERS; HUGH M. NELSON; KEVIN L. OWENS; T.E.

(

1 PARKER; MICHAEL VIGNOLA; and S. DIANNE WORRALL are General Partners
2 in SILVER WINGS and clients of Defendant ROMULUS ENGINEERING, INC.
3 Plaintiffs VICTOR H. KLASSEN, trustee for the Revocable Living Trust
4 of VICTOR H. KLASSEN and ROSA A. BAYER are Limited Partners in
5 SILVER WINGS and clients of ROMULUS ENGINEERING, INC. Hereinafter
6 the General and Limited Partners shall be referred to together as
7 "INDIVIDUAL PLAINTIFFS" and together with SILVER WINGS, as
8 "PLAINTIFFS".

9 3. PLAINTIFFS are informed and believe and thereon allege
10 that Defendant ROMULUS ENGINEERING, INC. ("ROMULUS"), is a
11 corporation organized and existing under the laws of the State of
12 Delaware and licensed to do business in California. The principal
13 place of business is, and at all times herein mentioned was in the
14 city and county of San Francisco, California.

15 4. PLAINTIFFS are informed and believe and thereon allege
16 that Defendant THE 22ND CENTURY CORPORATION is a corporation
17 organized and existing under the laws of the State of Delaware
18 licensed to do business in California with its principal place of
19 business in the county of San Mateo, California.

20 5. PLAINTIFFS are informed and believe and thereon allege
21 that Defendant ROMULUS CORPORATION is a corporation organized and
22 existing under the laws of the State of Delaware with its principal
23 place of business in the State of Oregon whose business activities
24 in California are substantial, continuous and systematic.

25 6. PLAINTIFFS are informed and believe and thereon allege
26 that Defendant SMG CORPORATION is a corporation organized and
27 existing under the laws of the State of Delaware licensed to do
28 business in California with its principal place of business in the

1 county of San Mateo, California.

2 7. PLAINTIFFS are informed and believe and thereon allege
3 that Defendant GENERAL CELLULAR INTERNATIONAL, INC., dba CELLULAR
4 INTERNATIONAL, INC., is a corporation organized and existing under
5 the laws of the State of Delaware licensed to do business in
6 California with its principal place of business in the county of San
7 Mateo, California.

8 8. PLAINTIFFS are informed and believe and thereon allege
9 that Defendant INDEPENDENT CELLULAR, INC., is a corporation
10 organized and existing under the laws of the State of Delaware
11 licensed to do business in California with its principal place of
12 business in the county of San Mateo, California.

13 9. PLAINTIFFS are informed and believe and thereon allege
14 that Defendant QUENTIN L. BREEN ("BREEN") is and at all times herein
15 mentioned was, a resident of the State of Oregon, whose business
16 activities in California are substantial, continuous and systematic.

17 10. PLAINTIFFS are informed and believe and thereon allege
18 that Defendant ANTHONY T. EASTON ("EASTON") is, and at all times
19 herein mentioned was, a resident of the County of San Mateo,
20 California.

21 11. PLAINTIFFS are informed and believe and thereon allege
22 that Defendant DANIEL J. PARKS ("PARKS") is, and at all times herein
23 mentioned was, a resident of the County of Sonoma, California.

24 12. Between July, 1987 and May, 1988, INDIVIDUAL PLAINTIFFS
25 each entered into a contract with Defendant ROMULUS entitled
26 "Cellular Application Services Agreement" (together "the
27 Contracts"). A true and correct copy of one of the Contracts is
28 attached as Exhibit "A" and incorporated herein by reference.

1 13. PLAINTIFFS are informed and believe and thereon allege
2 that Defendant BREEN is the President of Defendant ROMULUS.

3 14. PLAINTIFFS are informed and believe and thereon allege
4 that Defendant EASTON is the Chairman and Chief Executive Officer of
5 Defendant ROMULUS.

6 15. PLAINTIFFS are informed and believe and thereon allege
7 that Defendant PARKS is an officer and director of Defendant
8 ROMULUS.

9 16. PLAINTIFFS are informed and believe and thereon allege
10 that there exists, and at all times herein mentioned there existed,
11 a unity of interest and ownership between Defendants BREEN and
12 EASTON, and Defendant ROMULUS, such that any individuality and
13 separateness between Defendants BREEN and EASTON, and Defendant
14 ROMULUS have ceased, and Defendant ROMULUS is the alter ego of
15 Defendants BREEN and EASTON in that Defendants BREEN and EASTON
16 completely controlled, dominated, managed and operated Defendant
17 ROMULUS and intermingled its assets with their own to suit the
18 convenience of Defendants BREEN and EASTON and in order to avoid
19 payment of the obligations owed to creditors of Defendant ROMULUS.

20 17. Adherence to the fiction of the separate existence of
21 Defendant ROMULUS from Defendants BREEN and EASTON would permit an
22 abuse of the corporate privilege and would promote injustice in that
23 it would allow Defendants BREEN, EASTON and ROMULUS to profit from
24 their relationships with PLAINTIFFS while allowing them to avoid
25 payments of obligations owed to PLAINTIFFS by Defendant ROMULUS.

26 18. PLAINTIFFS are informed and believe and thereon allege
27 that there exists, and at all times herein mentioned there existed,
28 a unity of interest and ownership between Defendants BREEN and

EASTON, and Defendants THE 22ND CENTURY CORPORATION, ROMULUS CORPORATION, SMG CORPORATION, GENERAL CELLULAR INTERNATIONAL, INC., dba CELLULAR INTERNATIONAL, INC. (together "Corporate Defendants") such that any individuality and separateness between Defendants BREEN and EASTON, and the Corporate Defendants have ceased, and the Corporate Defendants are the alter egos of Defendants BREEN and EASTON in that Defendants BREEN and EASTON completely controlled, dominated, managed and operated the Corporate Defendants and intermingled their assets with their own to suit the convenience of Defendants BREEN and EASTON and in order to avoid payment of the obligations owed to creditors of Defendants BREEN and EASTON.

19. Adherence to the fiction of the separate existence of the Corporate Defendants from Defendants BREEN and EASTON would permit an abuse of the corporate privilege and would promote injustice in that it would allow Defendants BREEN and EASTON, and the Corporate Defendants to profit from their relationships with PLAINTIFFS while allowing them to avoid payments of obligations owed to PLAINTIFFS by Defendants BREEN and EASTON.

20. PLAINTIFFS are informed and believe that Defendant PARKS was instrumental in the creation of SILVER WINGS as a general partnership. PLAINTIFFS are further informed and believe that Defendant PARKS aided Defendants BREEN and EASTON in the formation of corporations for the purpose of limiting or avoiding personal liability in the event of litigation.

21. PLAINTIFFS are ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants named as DOES 1 to 100, and have therefore sued them by such fictitious names. Upon discovery of their true names,

PLAINTIFFS will seek leave to amend this Complaint to show their true names and capacities, together with apt and proper words to charge them.

22. PLAINTIFFS are informed and believe and thereon allege that at all relevant times, each of the Defendants, including DOES 1 to 100, was the agent, servant and employee of the remaining Defendants and in doing the things herein alleged was acting within the course and scope of such agency or employment and with the consent and permission of the remaining Defendants; and that each of the Defendants, including DOES 1 to 100; proximately caused the damages hereinafter alleged.

23. PLAINTIFFS are informed and believe and thereon allege that DOES 1 to 100 were responsible in some manner for the events and happenings set forth herein. It shall be deemed that whenever and wherever in this Complaint any Defendant, whether specifically named or not, is the subject of any charging allegation, that DOES 1 to 100 are likewise the subject of that charging allegation.

24. The Federal Communications Commission ("FCC") designated 428 markets called Rural Statistical Areas ("RSAs") for the purpose of awarding permits and licenses for the construction and operation of cellular telephone systems.

25. In May, 1981, Congress mandated that two cellular operators would exist in each designated RSA to encourage competition. One operator was to be selected from the existing regional wireline telephone companies; the competing entity was to be a non-wireline operator, such as SILVER WINGS. The FCC held two lotteries, administered concurrently for the two operators.

///

(

1 26. To participate in this lottery, an applicant was required
2 to provide a financial statement or letter of credit from a lending
3 institution reflecting adequate means to construct a cellular system
4 should they become a successful winner. Applicants also had to
5 submit applications and specified engineering materials prepared in
6 conformity with FCC regulations.

7 27. In FCC lotteries, the winner of an RSA is initially listed
8 as a "Tentative Selectee," pending challenges from a Petition to
9 Deny from opponents, and screening by the FCC for conformity with
10 its regulations.

11 28. If there are no Petitions to Deny and the Tentative
12 Selectee passes FCC scrutiny, a Construction Permit is usually
13 granted within four to six months which allows the Tentative
14 Selectee eighteen months to build the system, or forfeit it.
15 Following completion of the construction, the FCC inspects the
16 system and grants a license to operate if it conforms to the
17 necessary laws and regulations.

18 29. Defendants ROMULUS, BREEN and EASTON (together
19 "DEFENDANTS") held themselves out as having the necessary
20 information and expertise to complete applications for the FCC
21 lottery in conformance with FCC regulations.

22 30. Each of the INDIVIDUAL PLAINTIFFS contacted DEFENDANTS to
23 have them prepare an application for participation in the FCC
24 lottery for allocation of licenses to operate a cellular telephone
25 system in areas designated as RSAs.

26 31. Each individual Plaintiff signed a Service Agreement with
27 Defendant ROMULUS and was assured that all the details of the
28 application preparation, conformity and legal requirements would be

(

1 taken care of by DEFENDANTS which were to prepare the applications,
2 handle the FCC fees and submit the requisite engineering material,
3 all letter-perfect and defect-free with conformity to current FCC
4 regulations.

5 32. Following the signing of the Contracts, Defendant ROMULUS
6 brought together PLAINTIFFS and assigned them to SILVER WINGS, a
7 pre-formed General Partnership designed to consist of 20% maximum
8 non-U.S. citizen interest holders.

9 33. SILVER WINGS won in the third lottery and was named
10 Tentative Selectee for an RSA. A market potentially very valuable
11 to any cellular system operator.

12 34. Subsequent to SILVER WINGS being named Tentative Selectee,
13 a partnership named Continental Cellular was dismissed by the FCC
14 for having non-citizen members in its General Partnership structure,
15 thus violating the FCC's regulation prohibiting alien participation
16 in management affairs. Continental Cellular then restructured its
17 partnership into a Limited Partnership, thus insulating non-citizens
18 from the management of the partnership.

19 35. SILVER WINGS also reacted and had counsel amend its
20 structure into a Limited Partnership in order to insulate non-
21 citizens from management. Soon after, at least 20 partnerships,
22 mostly ROMULUS applicants now made aware of this alleged infraction,
23 amended their respective applications to reflect Limited Partnership
24 status.

25 36. Continental Cellular, being the first to win in the
26 lottery process was also first to be cited by the FCC for this
27 infraction, thus establishing precedent for the other 20 plus
28 partnerships with similar defects. Continental Cellular has thus

1 become the test case for all affected partnerships.

2 37. After restructuring the Partnership Agreement, Continental
3 Cellular was again given notice of its dismissal based on the alien
4 ownership issue. It was informed that as its conversion to Limited
5 Partnership was after the lottery commenced and qualification is
6 based upon the structure of the partnership as it stood at the time
7 of its application prior to the lottery, that the amendment to alter
8 its structure to insulate its aliens was unacceptable.

9 38. The FCC subsequently gave notice to SILVER WINGS and
10 approximately 20 other partnerships of their dismissals, citing
11 identical circumstances to those of Continental Cellular.

12 39. SILVER WINGS then joined with a group of the partnerships
13 thus affected and retained counsel to file a Petition for
14 Reconsideration before the FCC. Continental Cellular had previously
15 filed a similar Petition which was denied. Continental Cellular
16 appealed the denial of its Petition for Reconsideration to the D.C.
17 Court of Appeals which remanded the Continental Cellular matter back
18 to the FCC on or about October 1, 1990.

19 40. The dismissals of Continental Cellular upon remand, and of
20 SILVER WINGS and 18 other partnerships on their Petitions of
21 Reconsideration were affirmed by the FCC because of the infraction
22 of the regulations regarding participation by non-citizens.

23 41. SILVER WINGS and 19 other partnerships, then filed with
24 the U.S. Court of Appeals for the District of Columbia Circuit to
25 seek relief from the FCC's capricious and inconsistent
26 interpretation of its regulations in reaching its decision regarding
27 the dismissals. These cases are still pending.

28 ///

42. The FCC has since held new lotteries and awarded the RSA's to new Tentative Selectees. SILVER WINGS and the other partnerships have filed Petitions for dismissal.

WHEREFORE, Plaintiff prays for judgment as set forth below.

FIRST CAUSE OF ACTION
(Breach of Written Contract
(INDIVIDUAL PLAINTIFFS Against ROMULUS)

43. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 42 of this Complaint as though fully set forth below.

44. The INDIVIDUAL PLAINTIFFS each entered into a contract with Defendant ROMULUS entitled "Cellular Application Services Agreement."

45. PLAINTIFFS have performed all conditions, covenants, and promises under the Contracts required to be performed on their parts.

46. Within the last four years, DEFENDANTS breached the Contracts by failing to prepare and submit PLAINTIFFS' applications in accordance with FCC regulations. Those regulations limit participation by non U.S. citizens. By structuring the Partnership as a General Partnership rather than a Limited Partnership, DEFENDANTS violated the FCC regulations causing SILVER WINGS to lose its position as Tentative Selectee and preventing it from obtaining a construction permit and license to operate. Even if the Court of Appeal ultimately decides in favor of PLAINTIFFS, they will be damaged as the authorized competitor in the area will have had two years head start in constructing its cellular phone system and developing a market.

///

47. Furthermore, DEFENDANTS' breach of the Contracts have prevented PLAINTIFFS from making any further application to the FCC as SILVER WINGS, L.P. It has caused exclusion from full term participation in the original lottery and in those re-lotteries that have since been held.

48. As a direct and proximate result of DEFENDANTS' breach of the Contracts, PLAINTIFFS have been damaged in an amount to be proven at trial, but in any event, in excess of Twenty-Five Thousand Dollars (\$25,000.00).

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

SECOND CAUSE OF ACTION
(Negligence)

49. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 48 of this Complaint as though fully set forth below.

50. DEFENDANTS undertook to join PLAINTIFFS into a partnership for the purpose of applying for RSAs under the FCC lottery. DEFENDANTS held themselves out as having the necessary knowledge and expertise to complete applications for the FCC lottery in conformance with FCC regulations and as having more skill and knowledge in this area than the ordinary individual.

51. Having undertaken to form the partnership, and having held themselves out as having special knowledge and expertise in this area, DEFENDANTS were under a duty to exercise the level of care and skill to do so in compliance with FCC regulations that a professional engaged in such a business would exercise.

52. Within the last two years, DEFENDANTS breached their duty by failing to exercise the necessary standard of care and skill in

(
1 forming the partnership and making application to the FCC.

2 53. As a direct and proximate result of DEFENDANTS'
3 negligence, SILVER WINGS lost its position as Tentative Selectee and
4 preventing it from obtaining a construction permit and license to
5 operate. Even if the Court of Appeal ultimately decides in favor of
6 PLAINTIFFS, they will be damaged as the authorized competitor in the
7 area will have had two years head start in constructing its cellular
8 phone system and developing a market.

9 54. As a direct and proximate result of DEFENDANTS'
10 negligence, PLAINTIFFS have been damaged in an amount to be proved
11 at trial, but in any event, in excess of Twenty-Five Thousand
12 Dollars (\$25,000.00).

13 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

14 THIRD CAUSE OF ACTION
15 (Fraud - False Promise)

16 55. PLAINTIFFS reallege and incorporate herein by reference
17 paragraphs 1 through 54 of this Complaint as though fully set forth
18 below.

19 56. DEFENDANTS represented to PLAINTIFFS that they would
20 prepare their applications in compliance with FCC regulations such
21 that they would be "letter-perfect and defect-free."

22 57. PLAINTIFFS are informed and believe and thereon allege
23 that the representations set forth above were false and that
24 DEFENDANTS knew, or should have known of the falsity of those
25 representations.

26 58. PLAINTIFFS are informed and believe and thereon allege
27 that DEFENDANTS intentionally made the forgoing false
28 representations to PLAINTIFFS with the intent of misleading

(

1 PLAINTIFFS and causing PLAINTIFFS to enter into the Contracts.

2 59. PLAINTIFFS were unaware of the falsity of the
3 representations described above, and relied upon those
4 representations in deciding to enter into the Contracts. Had they
5 known of the falsity of those representations, they would not have
6 entered into the Contracts. PLAINTIFFS did not become aware of the
7 falsity of these representations until sometime in the last three
8 years.

9 60. As a direct and proximate result of the false
10 representations made by DEFENDANTS, PLAINTIFFS have sustained damage
11 in an amount to be proved at trial, but in any event, in excess of
12 Twenty-Five Thousand Dollars (\$25,000.00.)

13 61. PLAINTIFFS are informed and believe and thereon allege
14 that in doing the things herein alleged DEFENDANTS acted
15 intentionally, willfully, fraudulently, maliciously, with the intent
16 and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are
17 therefore entitled to an award of exemplary damages in an amount
18 sufficient to deter DEFENDANTS from similar conduct in the future.

19 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

20 FOURTH CAUSE OF ACTION
21 (Negligent Misrepresentation)

22 62. PLAINTIFFS reallege and incorporate herein by reference
23 paragraphs 1 through 61 of this Complaint as though fully set forth
24 below.

25 63. PLAINTIFFS are informed and believe and thereon allege
26 that the representations set forth above were false and that
27 DEFENDANTS made those representations with no reasonable grounds for
28 believing them to be true.

64. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS made the forgoing false representations to PLAINTIFFS with the intent of causing PLAINTIFFS to enter into the Contracts.

65. PLAINTIFFS were unaware of the falsity of the representations described above, or of DEFENDANTS' inability to make the above reference allegations accurately, and relied upon those representations in deciding to enter into the Contracts. Had they known of the falsity of those representations, they would not have entered into the Contracts. PLAINTIFFS did not become aware of the falsity of these representations until sometime in the last three years.

66. As a direct and proximate result of the false representations made by DEFENDANTS, PLAINTIFFS have sustained damage in an amount to be proved at trial, but in any event, in excess of Twenty-Five Thousand Dollars (\$25,000.00)

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

67. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 66 of this Complaint as though fully set forth below.

68. DEFENDANTS held themselves out as having the necessary knowledge and expertise to complete applications for the FCC lottery in conformance with FCC regulations. DEFENDANTS furthermore undertook to form partnerships through which to apply to the FCC lotteries on behalf of their clients. They therefore acted as promoters of the partnerships. Furthermore, they had access to

1 information not accessible to their clients. In reliance upon
2 DEFENDANTS' superior knowledge and expertise PLAINTIFFS reposed
3 trust and confidence in them and in their integrity, fidelity and
4 expertise.

5 69. By virtue of having held themselves out as experts in the
6 completion of FCC applications, their undertaking of the formation
7 of partnerships on behalf of their clients, their superior knowledge
8 and information and PLAINTIFFS' reposing of trust and confidence in
9 their integrity, fidelity and expertise, DEFENDANTS stood in the
10 position of fiduciaries to PLAINTIFFS.

11 70. Over the period of time from the formation of the
12 Partnership to the present, DEFENDANTS breached their fiduciary
13 duties by failing to structure the Partnership in such a way as to
14 comply with FCC regulations.

15 71. In acting as described above, DEFENDANTS failed to
16 exercise the care required by a promoter in that they acted contrary
17 to the terms of the Contracts and unduly profited from the formation
18 of the Partnership and otherwise obtained advantage over PLAINTIFFS
19 in the establishment of the Partnership.

20 72. As a result of DEFENDANTS' breach of their fiduciary
21 duties, PLAINTIFFS have sustained damage in an amount to be proved
22 at trial, but in any event, in excess of Twenty-Five Thousand
23 Dollars (\$25,000.00).

24 73. PLAINTIFFS are informed and believe and thereon allege
25 that in doing the things herein alleged DEFENDANTS acted
26 intentionally, willfully, fraudulently, maliciously, with the intent
27 and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are
28 therefore entitled to an award of exemplary damages in an amount

sufficient to deter DEFENDANTS from similar conduct in the future.

WHEREFORE, PLAINTIFFS pray for judgment as follows:

PRAYER FOR RELIEF

AS TO THE FIRST CAUSE OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus interest thereon as provided by law;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court deems proper.

AS TO THE SECOND CAUSE OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus interest thereon as provided by law;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court deems proper.

AS TO THE THIRD AND FIFTH CAUSES OF ACTION:

1. For damages in an amount to be proved at trial but in any event in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus interest thereon as provided by law;
2. For exemplary and punitive damages according to proof;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court deems proper.

///

///

///

1 AS TO THE FOURTH CAUSE OF ACTION:

2 1. For damages in an amount to be proved at trial but in any
3 event in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus
4 interest thereon as provided by law;

5 2. For costs of suit herein incurred; and

6 3. For such other and further relief as the court deems
7 proper.

8
9 DATED: September 30, 1992

BELL, ROSENBERG & HUGHES

10
11 By John H. Banister
12 John H. Banister
13 Attorneys for Plaintiffs
14 SILVER WINGS, L.P. and its
15 INDIVIDUAL GENERAL and LIMITED
16 PARTNERS
17
18
19
20
21
22
23
24
25
26
27
28

Name, Address and Telephone No. of Attorney(s)
Brian J. Friedman (612) 920-8444
Thiel, Campbell, Gunderson, Anderson and Friedman
6600 France Avenue South, Suite 460
Minneapolis, MN 55435-1810

Space Now for Use of Court Clerk Only
FILED
San Francisco County Superior Court

MAY 5 1994

ALAN CARLSON, Clerk
BY: *[Signature]*
Deputy Clerk

Attorney(s) for Plaintiff, Todd A. Pitts

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):

Todd A. Pitts

CASE NUMBER 933210

REQUEST FOR DISMISSAL
TYPE OF ACTION

Defendant(s):

Romulus Engineering, et al.

- ☐ Personal Injury, Property Damage and Wrongful Death:
☐ Motor Vehicle ☐ Other
☐ Domestic Relations ☐ Eminent Domain
☒ Other: (Specify) contract

(Abbreviated Title)

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

1. ☒ With prejudice ☐ Without prejudice
2. ☒ Entire action ☐ Complaint only ☐ Petition only ☐ Cross-complaint only
☐ Other: (Specify)*

18 Dated: *April 12*, 1994

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

[Signature]
Attorney(s) for Plaintiff(s)

Brian J. Friedman

(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.**

Dated: _____

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

Attorney(s) for _____

(Type or print attorney(s) name(s))

(To be completed by clerk)

- ☐ Dismissal entered as requested on _____
☐ Dismissal entered on _____ as to only _____
☐ Dismissal not entered as requested for the following reason(s), and attorney(s) notified on _____

Dated: _____

By _____ Clerk
Deputy

Name, Address and Telephone No. of Attorney(s)

Brian J. Friedman (612) 920-8444
Thiel, Campbell, Gunderson, Anderson and Friedman
6600 France Avenue South, Suite 460
Minneapolis, MN 55435-1810

E. FILED
Space for Use Only
San Francisco County Superior Court

MAY 5 1994

ALA - ARLES - P...
BY: C...
Custina E. ...

Attorney(s) for ..Plaintiff, Todd A. Pitts.....

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):

Todd A. Pitts

CASE NUMBER 933210

REQUEST FOR DISMISSAL

TYPE OF ACTION

- ☐ Personal Injury, Property Damage and Wrongful Death:
☐ Motor Vehicle ☐ Other
☐ Domestic Relations ☐ Eminent Domain
☒ Other: (Specify) ... contract

Defendant(s):

Romulus Engineering, et al.

(Abbreviated Title)

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

1. ☒ With prejudice ☐ Without prejudice
2. ☒ Entire action ☐ Complaint only ☐ Petition only ☐ Cross-complaint only
☐ Other: (Specify)*

Dated: April 12, 1994

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

Brian J. Friedman
Attorney(s) for Plaintiffs

Brian J. Friedman

(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.

Dated: June 16, 1994

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

Attorney(s) for

(Type or print attorney(s) name(s))

(To be completed by clerk)

- ☐ Dismissal entered as requested on
☐ Dismissal entered on as to only
☐ Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

Dated

By Clerk
Deputy



7-5-94

Name, Address and Telephone No. of Attorney(s)

John H. Banister
BELL, ROSENBERG & HUGHES
P.O. Box 70220, Station "D"
Oakland, CA 94612-0220
(510) 832-8585
(Bar No: 103375)

Attorney(s) for Plaintiffs.....

Space Below for Use of Court Clerk Only

FILED
San Francisco County Superior Court

JUN 13 1994

ALAN CARLSON, Clerk

BY: *[Signature]*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s): SILVER WINGS, L.P., et al.

CASE NUMBER 946286

REQUEST FOR DISMISSAL

TYPE OF ACTION

- ☐ Personal Injury, Property Damage and Wrongful Death:
☐ Motor Vehicle ☐ Other
☐ Domestic Relations ☐ Eminent Domain
☒ Other: (Specify) Breach of Contract,.....
etc.

Defendants(s): ROMULUS ENGINEERING, et al.

(Abbreviated Title)

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

1. ☒ With prejudice ☐ Without prejudice
2. ☒ Entire action ☐ Complaint only ☐ Petition only ☐ Cross-complaint only
☐ Other: (Specify)*

Dated: June 8, 1994

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

[Signature]
Attorney(s) for Plaintiffs SILVER WINGS

John H. Banister

(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.**

Dated: June 9, 1994

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complaint (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

[Signature]
Attorney(s) for

Daniel J. Furniss

(Type or print attorney(s) name(s))

(To be completed by clerk)

- ☐ Dismissal entered as requested on
☐ Dismissal entered on as to only
☐ Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

Dated: _____ By _____, Clerk
By _____, Deputy

John H. Banister, Esq. (State Bar No. 100375)
Howard G. Curtis, Esq. (State Bar No. 7915)
BELL, ROSENBERG & HUGHES
1300 Clay Street, Suite 1000
P.O. Box 70220, Station "D"
Oakland, California 94612-0220
Telephone: (510) 832-8585

Attorneys for Plaintiffs
CELLSWITCH, L.P. and its
GENERAL and LIMITED PARTNERS

FILED
San Francisco County Superior Court

NOV - 5 1992

MICHAEL K. TAMONY, Clerk
BY Lucy L. Tamony Deputy Clerk

182.00
MAY 28 1993 8:30 AM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

CELLSWITCH, L.P., a Delaware
Limited Partnership; CHARLES
F. BRANDT and MARK W.
SMITHERS, individuals doing
business as B AND S
INVESTMENTS, an Arkansas
partnership; GEORGE E.
BROUSSARD; JOHN H. BRYNSVOLD;
KIMBERLY D. CANTRELL; ROY L.
CARBERRY; CAROLYN C. CHAPEK;
D. SUMNER CHASE III; ROGER
EDWARD DAVIDSON; RUBY L.
DIETEL; J. LESVIA FALCON;
CAROL FULLINWIDER; P.W.
GIFFORD; MARCUS L. GREGORY;
MARLENE D. HEINS; JIM C. HILL;
J.W. HULL; WILLIAMS JANKS II;
WALTER L. JOHNSTON; SARAH A.
KUNTZ; ROBERT L. McCLELLAN;
ELAINE McQUEEN; MONNA SUE
NUNLEY; JOAN G. PADDEN; JACK
R. PARKER; ODIS D. POWELL;
ARTHUR F. ROIZMAN; NATHA LEE
SHANNON; TERESA S. VIGNOLA;
and JANET B. CLOWES,
individuals,

Plaintiffs,

v.

ROMULUS ENGINEERING, INC., a
Delaware corporation; ROMULUS
CORPORATION, a corporation;
THE 22ND CENTURY CORPORATION,
a corporation; SMG
CORPORATION, a corporation;

No:

047093

COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENCE, FRAUD,
NEGLIGENT MISREPRESENTATION AND
BREACH OF FIDUCIARY DUTY

1 GENERAL CELLULAR)
INTERNATIONAL, INC. dba)
2 CELLULAR INTERNATIONAL, INC.,)
a corporation; INDEPENDENT)
3 CELLULAR TELEPHONE, INC.,)
QUENTIN L. BREEN; ANTHONY T.)
4 EASTON, DANIEL J. PARKS,)
individuals, and DOES 1)
5 through 100, inclusive,)
)
6 Defendants.)
)

7
8 PLAINTIFFS hereby allege as follows:

9 GENERAL ALLEGATIONS

10 1. Plaintiff CELLSWITCH, L.P. ("CELLSWITCH") is a Limited
11 Partnership, organized and existing under the laws of the State of
12 Delaware with its principal place of business in the County of
13 Pulaski, State of Arkansas. CELLSWITCH does not regularly conduct
14 business within the State of California and is therefore exempt from
15 the requirements of California Business & Professions Code §17918.

16 2. Plaintiff B AND S INVESTMENTS is an Arkansas partnership
17 consisting of CHARLES F. BRANDT and MARK W. SMITHERS. B AND S
18 INVESTMENTS does not regularly conduct business within the State of
19 California and is therefore exempt from the requirements of
20 California Business & Professions Code §17918.

21 3. Plaintiffs B AND S INVESTMENTS; CHARLES F. BRANDT; MARK W.
22 SMITHERS; GEORGE E. BROUSSARD; JOHN H. BRYNSVOLD; KIMBERLY D.
23 CANTRELL; ROY L. CARBERRY; CAROLYN C. CHAPEK; D. SUMNER CHASE III;
24 ROGER EDWARD DAVIDSON; RUBY L. DIETEL; J. LESVIA FALCON, CAROL
25 FULLINWIDER; P.W. GIFFORD, MARCUS L. GREGORY; MARLENE D. HEINS; JIM
26 C. HILL; J. W. HULL; WILLIAM JANKS II; WALTER L. JOHNSTON; SARAH A.
27 KUNTZ; ROBERT L. McCLELLAN; ELAINE McQUEEN; MONNA SUE NUNLEY; JOAN
28 G. PADDEN; JACK R. PARKER; ODIS D. POWELL; ARTHUR F. ROIZMAN; NATHA